



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### West Central Regional Office

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L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

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Regional Director

### COMMONWEALTH OF VIRGINIA WASTE MANAGEMENT BOARD CONSENT ORDER ISSUED TO SIMMONS EXCAVATING, INC. AND MR. DALE SIMMONS

#### Section A: Purpose

This is a Consent Order issued under the authority of § 10.1-1182, 10.1-1184, and 10.1-1455(G) of the Code of Virginia (1950), as amended, by the Virginia Waste Management Waste Board to Simmons Excavating, Inc. and Mr. Dale Simmons to resolve certain violations of environmental laws and/or regulations.

#### Section B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Waste Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code §10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a consent order.

6. “VSWMR” means the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10 *et seq.*
7. “Simmons Excavating, Inc.” or “Simmons” means Simmons Excavating, Inc, a Virginia corporation certified to do business in Virginia on August 11, 2004 and located at 9276 Brooks Mill Road, Wirtz, Virginia and Mr. Dale S. Simmons, individual and owner of Simmons Excavating, Inc.
8. “Site” means the property located at 9276 Brooks Mill Road in Wirtz, Virginia and owned by Mr. Dale S. Simmons.
9. “WCRO” means the West Central Regional Office of DEQ, located in Roanoke, Virginia.

**Section C: Findings of Fact and Conclusions of Law**

1. Dale S. Simmons is the owner and operator of Simmons Excavating, Inc. Through Simmons Excavating, Inc., Mr. Simmons has disposed of various “solid waste” as that term is defined in Va. Code 10.1-1400. Most of the solid waste disposed is wood waste from land clearing activities generated off-site.
2. Simmons does not have a permit from DEQ to dispose of solid waste at the Site.
3. On June 30, 2005, DEQ WCRO Waste Compliance Staff conducted an inspection at the Site. It appeared that approximately one acre of the land was being used for the disposal of land clearing debris (“LCD”).
4. Waste Compliance staff met with Mr. Simmons at an off-site location where Mr. Simmons verbally agreed to cease disposal of land clearing debris at the Site.
5. On October 17, 2005 Waste Compliance Staff met Mr. Simmons at the Site, and there was no evidence that Mr. Simmons had continued to haul land clearing debris to the site after the June 30, 2005 inspection.
6. During the October 17, 2005 inspection Mr. Simmons stated that:
  - a large portion (approximately one half) of the waste was generated on the Site for the purposes of creating pasture land;
  - the waste brought to the site was waste generated by his company only and has not accepted waste from other contractors;



- he has been hauling LCD to the Site for about 20 years;
  - it has been his practice to dispose of the LCD at the point of origination by open burning and that 90% of his LCD has been disposed of via open burning, and;
  - he has only brought LCD to the Site when it has been un-safe to burn the LCD.
7. The Department issued a Notice of Violation to Mr. Simmons on October 24, 2005, which cited Mr. Simmons for apparent violations of the Virginia Code and the Virginia Solid Waste Management Regulations, as follows:
- § 10.1-1408.1.A - Operation of a facility for the disposal, treatment, or storage of non-hazardous solid waste without a permit from the Director or the Department.
  - 9 VAC 20-80-60.E.9 – Burying stumps and other land clearing debris from agricultural or forestall activities on the site of the clearing.
  - 9 VAC 20-80-90 – Unpermitted facilities. No person shall operate any sanitary landfill or other facility for the disposal, treatment, or storage of solid waste without a permit from the director. No person may allow waste to be disposed of on his property without a permit.
8. The land clearing debris that Simmons disposed at the Site constitutes “debris waste” at that term is used in 9 VAC 20-80-10 et seq. Accordingly, the Site is governed by 9 VAC 25-80-260 relating to Construction/demolition/debris/landfills.

**Section D: Agreement and Order**

By virtue of the authority granted it pursuant to Va. Code §10.1-1455, and upon consideration of Va. Code § 10.1-1186.2, the Waste Board orders Simmons, and Simmons agrees, to perform the actions described below and in Appendix A of this Order. In addition, the Waste Board orders Simmons, and Simmons voluntarily agrees, to pay a civil charge of Three Thousand Dollars (\$3,000.00) within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the “Treasurer of Virginia,” delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

The payment shall include Simmon’s Federal ID number.

**Section E: Administrative Provisions**

1. The Waste Board may modify, rewrite, or amend this Order with the consent of Simmons for good cause shown by Simmons, or on its own motion after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified herein. This Order shall not preclude the Waste Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. For the purposes of this Order and subsequent actions with respect to this Order, Simmons admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Simmons consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of the Order.
5. Simmons declares that it has received fair and due process under the Administrative Process Act, Code §§ 2.2-4000 *et seq.* and the Virginia Waste Management Act, Code §§ 10.1-1400 *et seq.* and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Waste Board or the Director to modify, rewrite, amend, or enforce this Order, or any subsequent deliverables required to be submitted by Simmons and approved by the Department, without consent of Simmons.
6. Failure by Simmons to comply with any of the terms of this Order shall constitute a violation of an order of the Waste Board. Nothing herein shall act to waive or bar the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Waste Board or Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder



of the Order shall remain in full force and effect.

8. Simmons shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, or other acts of God, war, strike, or other such occurrences. Simmons must show that such circumstances resulting in the noncompliance were beyond its control and were not due to a lack of good faith or diligence on its part. Simmons shall notify the Director and the Director of the Department's West Central Regional Office ("WCRO") in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director and the Director of the Department's West Central Regional Office in writing within 24 hours of learning of any condition above, which Simmons intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director of the Department of Environmental Quality or his designee and Simmons. Notwithstanding the foregoing, Simmons agrees to be bound by any compliance date that precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. Simmons petitions the Director or his designee to terminate the Order after it has completed all requirements of the Order and the Director or his designee approve the termination of the Order; or

- b. The Director or Waste Board terminates this Order in his or its sole discretion upon 30 days written notice to Simmons.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Simmons from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

11. By the signatures of Mr. Dale Simmons, individual, and Mr. Dale Simmons, Simmons Excavating, Inc., both voluntarily agree to the issuance of this Order.

Steven A. Oettrich Date: 6-28-06  
David K. Paylor, Director  
Department of Environmental Quality

Seen and Agreed to:

Dale S. Simmons  
Mr. Dale S. Simmons

The foregoing instrument was acknowledged before me on May 16, 2006

by Mr. Dale S. Simmons, in the County of Franklin, Commonwealth of Virginia.

Amanda H. Craig  
Notary Public

My Commission expires: June 30, 2009

And

Simmons Excavating Dale S. Simmons  
Simmons Excavating, Inc, by Mr. Dale S. Simmons

The foregoing instrument was acknowledged before me on May 16, 2006

By Mr. Dale S. Simmons, President of Simmons Excavating, Inc., in the County of Franklin, Commonwealth of Virginia.

Amanda H. Craig  
Notary Public

My Commission expires: June 30, 2009



**APPENDIX A –SCHEDULE OF COMPLIANCE**

Simmons shall:

1. Immediately cease and desist from using the Site to store or dispose of land clearing debris and other solid waste.
2. Complete a closure in place of the land clearing debris in accordance with 9 VAC 20-80-260 E – Closure of Construction/demolition/debris (CDD) landfills. Simmons shall close the Site in a manner that minimizes the need for further maintenance, and controls, minimizes or eliminates the post-closure escape of uncontrolled leachate, surface run-off, decomposition gas migration, or waste compensation products to the ground water, surface water, or to the atmosphere. This closure in place will include, but not be limited to, the following components:
  - A final cover system that is designed and constructed to minimize infiltration through the closed disposal unit and minimizes erosion of the final cover by containing sufficient earthen material that is capable of sustaining native plant growth.
  - Submission to the local land recording authority a survey plat prepared by a professional land surveyor registered by the Commonwealth indicating the location and dimensions of the disposal area. The plat filed with the local land recording authority shall contain a note which states the owner's future obligation to restrict disturbance of the Site as specified. A copy of the survey plat, as recorded, shall be filed with the Department.
  - Record a notation on the deed to the property, or on some other instrument which is normally examined during title search, notifying any potential purchaser or the property that the land has been used to manage solid waste. A copy of the deed notation as recorded shall be filed with the Department.
3. Within **30 days** of the effective date of the Order, provide the Department with a closure plan for the Department's approval. The closure plan shall include the applicable requirements in 9 VAC 20-80-260 E.
4. Within **90 days** of the effective date of the Order, provide to the Department proper documentation of the closure of the Site and provide the Department with copies of documents listed in paragraph 2 of this section.
5. Submit written notification to WCRO of the completion of all action items required by this Order within 14 days of completion. If completion of an item does not occur in a timely fashion, Simmons shall submit written notification to the Regional Office 14 days prior to the due date and state when they plan to complete the item.